

)	
MICHAEL W. MOORE, Appellant)	
)	
and)	Docket No. 04-2099
)	Issued: January 27, 2005
)	
U.S. POSTAL SERVICE, POST OFFICE,)	
Waterloo, IA, Employer)	
)	

Case Submitted on the Record

The issue is whether appellant has established a neurological condition causally related to a November 26, 2001 influenza vaccine received at the employing establishment.

FACTUAL HISTORY

On February 4, 2002 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1) alleging that he sustained Guillain-Barre syndrome¹ as a result of a influenza shot on November 26, 2001 at the employing establishment. The Office indicated in a statement of accepted facts that appellant voluntarily participated to receive an influenza vaccine on November 26, 2001, and requested that an Office medical adviser provide an opinion on causal relationship. In a report dated February 20, 2002, an Office medical adviser stated it could be that appellant developed Guillain-Barre syndrome as a result of an influenza shot, but additional medical evidence was needed with respect to appellant's treatment.

The record indicated that appellant received treatment from Dr. Ivo Bekavac, a neurologist, who indicated in a December 14, 2001 report that appellant had received an influenza shot on November 26, 2001 and was asymptomatic until December 10, 2001, when appellant had pain in the neck and head, with tingling in the legs and subsequently developed left facial weakness. Dr. Bekavac ordered diagnostic testing; in a report dated January 28, 2002, he diagnosed Guillain-Barre syndrome and stated that it may be due to the influenza shot. In a report dated February 18, 2002, Dr. Praful Kelkar, a neurologist, stated that appellant initially presented with symptoms that appeared to be Guillain-Barre syndrome, but appellant had a secondary lapse that indicated appellant probably had CIDP.

In a report dated May 13, 2002, the Office medical adviser stated that he had an opportunity to review the product literature regarding the association of an influenza vaccine with Guillain-Barre syndrome. The medical adviser stated, "The product literature is unequivocal. There has been no statistical association with the influenza vaccine since the swine influenza vaccine, I believe, in 1971. Later years of the vaccine, have shown no statistical correlation." He concluded that the Office should reject appellant's claim.

By decision dated May 28, 2002, the Office denied appellant's claim on the grounds that the medical evidence did not establish causal relationship between the claimed condition and the November 26, 2001 influenza vaccine. Appellant requested reconsideration and submitted additional evidence. In a report dated September 9, 2002, Dr. Bekavac stated "I believe [appellant's] symptoms and findings might be induced by the influenza shot which he received on November 26, 2001. It is well known that up to three percent of people with Guillain-Barre syndrome might have previous exposure to influenza shots." In a decision dated December 3, 2002, the Office denied modification of its May 28, 2002 decision.

Appellant again requested reconsideration and submitted a May 30, 2003 report from Dr. Kelkar, who diagnosed CIDP and provided results on examination. Dr. Kelkar stated that the influenza vaccination preceded the onset of CIDP, and "it can be said with medical certainty that it is possible that it may have played a role, but nothing more definite can be said about the

¹ According to the National Institute of Neurological Disorders and Stroke, Guillain-Barre syndrome is an acute neurological disorder characterized by weakness and sensory dysfunction of the legs and arms, caused by damage to the myelin sheath of the peripheral nerves. The chronic counterpart of the acute disease is chronic inflammatory demyelinating polyneuropathy (CIDP). See www.ninds.nih.gov.

relationship based on the current understanding and the epidemiological data.” In a decision dated October 29, 2003, the Office denied modification of its prior decisions.

By report dated January 22, 2004, Dr. Alan Fink, a neurologist, provided a history and reviewed medical records. Dr. Fink opined:

“It is my impression after reviewing the medical records, as well as my interview today by [tele]phone of [appellant], that the patient’s initial neurological symptoms, which would be construed within the first three months as Guillain-Barre and then three months following the patient’s influenza shot as [CIDP], were directly related within a reasonable medical probability to his November 26, 2001 influenza shot. Although the incidence is small of neurological effects of the influenza shot, they certainly have been documented as long as the neurological symptoms occur within a three[-]week period of time. [Appellant] fits that constraint of relating the influenza shot to his neurological symptoms. I believe his course is typical for patients who have neurological sequelae of the influenza shot, which include Guillain-Barre with or without CIDP. I state the above impressions with reasonable medical certainty.”

In a decision dated May 28, 2004, the Office reviewed the case on its merits and denied modification. The Office found that Dr. Fink did not provide a reasoned medical opinion on causal relationship between appellant’s condition and the influenza shot.

LEGAL PRECEDENT

Section 8123(a) of the Federal Employees’ Compensation Act provides that when there is a disagreement between the physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.² When there are opposing medical reports of virtually equal weight and rationale, the case must be referred to an impartial specialist, pursuant to section 8123(a), to resolve the conflict in the medical evidence.³

ANALYSIS

In the present case, the record indicates that appellant received an influenza vaccine at the employing establishment on November 26, 2001 and began to have neurological symptoms on December 10, 2001.⁴ Appellant was diagnosed with Guillain-Barre syndrome and CIDP. An Office medical adviser opined in a May 13, 2002 report that there was no causal relationship between the neurological condition and the influenza shot. He stated that his review of the literature indicated that there was no statistical association since the swine influenza vaccine from approximately 1971.

² *Robert W. Blaine*, 42 ECAB 474 (1991); 5 U.S.C. § 8123(a).

³ *William C. Bush*, 40 ECAB 1064 (1989).

⁴ An injury resulting from an influenza vaccine at the employing establishment is compensable under the Act, if the medical evidence on causal relationship is sufficient. *See, e.g., Howard E. Johnston*, 40 ECAB 777 (1989).

On the other hand, Dr. Fink opined that appellant's condition was causally related to the influenza vaccine. He stated that there was a documented association as long as the symptoms began within three weeks of the influenza shot, as in this case, and that appellant's course was typical for patients with neurological sequelae of the influenza shot.

The medical evidence is in conflict on the issue of whether appellant's Guillain-Barre syndrome or CIDP were causally related to the November 26, 2001 influenza vaccine. The case will be remanded to the Office to refer appellant, medical records and a statement of accepted facts to an impartial medical specialist to resolve the conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds that there is a conflict between attending physician Dr. Fink and the Office medical adviser on the issue of causal relationship between appellant's neurological condition and a November 26, 2001 influenza vaccine received at the employing establishment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 28, 2004 is set aside and the case remanded to the Office for proper resolution of the conflict in the medical evidence.

Issued: January 27, 2005
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member